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CareFirst BlueCross BlueShield

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John M. Colmers
Secretary
Maryland Department of Health
And Mental Hygiene
201 W. Preston Street
Baltimore, Maryland 21201

re: Health Care Access and Reimbursement Task Force Recommendation regarding "cram down" legislation

Dear John:

After hearing testimony and weighing all of the information provided to the Task Force, our recommendation is to forego any further legislation regarding the contracting process between providers and carriers. The Task Force learned that existing legislation currently operates to significantly restrict a carrier in its ability to require any provider to participate in one of the carrier's networks only if the provider agrees to participate in another network or provider panel of the carrier (INS 15-112(j). According to testimony presented by Mr. Jay Schwartz, representing MedChi, United Health Care, after its merger with MAMSI, began to require providers to participate in the HMO networks of MAMSI and United despite the differences in administrative procedures and reimbursement. Providers that wanted to participate, for example, in only the United HMO network, were required to also agree to participate in the MAMSI HMO networks and accept the MAMSI reimbursement when MAMSI members were seen. These facts were more or less confirmed by United's representative.

MedChi complained to MIA regarding the process, claiming that the practice violated Maryland law. MIA failed to find any violation of Maryland law regarding the practice. The decision of the MIA was later confirmed by the Maryland Courts.

MedChi now seeks to further restrict the contracting process by seeking legislation that would disallow the contracting process described above. To that end, MedChi obtained sponsorship of SB 749 during the 2007 regular session of the General Assembly. That bill would have disallowed United's ability to continue the practice described above. While the bill passed both the House and Senate it failed to receive a vote within the time allowed prior to close of session. The Task Force is now asked to recommend to the General Assembly that the bill be taken up again on the basis that it provides necessary legislative relief.

The Task Force also learned that any provider offered the above described contract arrangement could have chosen to close its panel upon entering into the contractual agreement. Additionally we learned that MIA received very few provider complaints regarding the practice. This appears to be an issue limited in scope to a very few number of providers and one that will ultimately cease to be an issue as the United/MAMSI transition to a single entity plays out over time. It does not appear to be an issue with the global consequences or inherent inequities that normally demand the extraordinary relief provided by way of prohibitive legislation. Providers have a number of alternatives available to them short of legislation. They can refuse to recontract or they can close their panels. They can contract with other carriers or no carriers. Their complaint is not without a current solution and it appears inappropriate for the legislature to intervene in an open contracting process that allows significant choice on the part of both parties to the negotiation. As we heard, the introduction of new legislation could result in some unintended consequences.

Therefore, our recommendation is that the Task Force advise the General Assembly that legislation is not needed in order to address the concerns expressed by MedChi.

Sincerely,

David Wolf